IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8101 of 1999

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RL KARAMATA

Versus

STATE OF GUJARAT

Appearance:

M/S.VYAS ASSOCIATES for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 29/06/2004

ORAL JUDGEMENT

1. The petitioner was appointed as Physician on 17th September 1979 after following due procedure for a period of one year by Gujarat Public Service Commission. The petitioner joined his service on 23rd November 1979 at Civil Hospital, Porbandar. According to the petitioner, though he was appointed for one year, since no other

appointment was made by GPSC, he continued to render his services at Civil Hospital, Porbandar. The petitioner also crossed Efficiency Bar with effect from 1st November 1984 and his name appeared in the seniority list at serial no.7 published by the Government. Thereafter another Seniority List came to be published on 31st December 1989 wherein his name was shown at serial no.10.

2. Thereafter the petitioner was promoted as Incharge Superintendent of the General Hospital, Porbandar as the Superintendent was on leave. On 2nd September 1999 the respondents issued a letter to the petitioner stating that since the petitioner was not appointed on regular basis, his name has been wrongly included in the seniority list and he has been wrongly given the higher pay-scale. The petitioner was therefore called upon to show-cause as to why his pay-scale should not be withdrawn. Since the petitioner was apprehending his termination, he approached this Court by way of the present proceedings.

3. This Court admitted the matter on 14th October 1999 and granted stay of the impugned order. Therefore the petitioner has been continuously working with the respondent.

4. Learned counsel for the petitioner stated that the petitioner has now been appointed in the Gujarat Health Services (Class-I) (Physician) and his name is reflected at serial no.5. He has produced a copy of the said order on record of this petition. In view of this development, the grievance with regard to termination of his services would not survive.

5. The petitioner has also challenged the order of recovery by the respondent dated 29th September 1999. Learned counsel for the petitioner submitted that before passing the said order the petitioner was not heard except issuing a notice which was referred to in the petition. This fact is not disputed by the learned counsel for the respondent authorities. It is also true that the petitioner has been granted pay-scale by the respondents and the petitioner has in fact rendered his services in pursuance of the appointment order. Therefore, if the respondents seek any recovery, it is necessary that the petitioner should be heard. Nothing has been pointed to show that the petitioner has been heard before issuing the order of recovery dated 29th September 1999. Therefore, on this ground and also in view of the subsequent developments, the order/Resolution dated 29th September 1999 requires to be quashed and set

aside.

6. In the result, the petition is partly allowed. The Government Order/Resolution dated 29th September 1999 is quashed and set aside. Rule is made absolute to the aforesaid extent. No order as to costs.

[K.S. JHAVERI, J.]

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